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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 (San José Division)

15 CALVARY CHAPEL SAN JOSE, et al.,

16 Plaintiffs,

17 v.

18 SANTA CLARA COUNTY,

19 Defendant.

No. 20-CV-03794 BLF

***CORRECTED* EXHIBIT “A” TO
DECLARATION OF MELISSA R.
KINIYALOCTS IN SUPPORT OF
DEFENDANT COUNTY OF SANTA
CLARA’S REPLY IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: January 26, 2023

Time: 9:00 a.m.

Crtrm: 3, 5th Floor

Judge: The Hon. Beth Labson Freeman

Exhibit A

In the Superior Court of the State of California
Santa Clara County Judicial District
Downtown Superior Court
Before the HONORABLE CYNTHIA LIE, Judge
Department 5

CALVARY CHAPEL SAN JOSE,

**CERTIFIED
TRANSCRIPT**

Petitioner,

-vs-

No. 20CV374470

THE COUNTY OF SANTA CLARA, et
al.,

Respondent.

_____/

Reporter's Transcript of Proceedings

March 4, 2021

Reported By: Martha Ruble, CSR 5145

Appearances of Counsel: (Via MS Teams)

For the Petitioner FREEDOM FOUNDATION
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BY: JEREMY AVILA, ESQ.
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1 ---oOo---

2 3:37 p.m.

3 THE COURT: Good afternoon, everyone. Thanks
4 for your patience. This is Judge Cynthia Lie in
5 Department 5.

6 MR. AVILA: Good afternoon, Your Honor.

7 THE COURT: If you'll just give me a moment
8 while I pull up my notes.

9 So this is the Calvary Chapel San Jose versus
10 County of Santa Clara, et al. And I'm just going to ask
11 for appearance please starting with Calvary Chapel.

12 MS. GONDEIRO: Mariah Gondeiro, appearing on
13 behalf of Calvary Chapel San Jose.

14 THE COURT: Good afternoon. And then for the
15 county.

16 MS. JOHNSON: Meredith Johnson appearing on
17 behalf of Respondent County of Santa Clara.

18 MR. AVILA: And Jeremy Avila, A-v, as in victor,
19 i-l-a, also appearing on behalf of Respondents, Your
20 Honor.

21 THE COURT: All right. Thank you very much.

22 And I do see that we have our court reporter on
23 the line. And I have signed the order appointing
24 Ms. Ruble as our pro tem for today.

25 MS. JOHNSON: Thank you.

26 THE COURT: So this matter was set for a
27 pretrial conference and also reserved for a hearing on
28 what the parties anticipated at the last pretrial



1 conference was going to be Calvary Chapel's motion for a
2 stay or further motion for a stay.

3 And, Ms. Gondeiro, is there anything further
4 that you would like to add to the papers that you filed
5 and that I reviewed?

6 MS. GONDEIRO: Your Honor, I think the only
7 thing -- and I think this was pointed out in the
8 Respondent's brief is the recent Supreme Court decision
9 in Gateway versus Newsom. That was the only thing that
10 wasn't in our brief, but it was in the county's. They
11 did mention it.

12 THE COURT: And I think it was mentioned in your
13 trial brief as well. So I did see that.

14 MS. GONDEIRO: Yes.

15 THE COURT: Anything further from Ms. Johnson or
16 Mr. Avila?

17 MS. JOHNSON: Your Honor, if you have any
18 questions, we will be happy to answer them, but we have
19 nothing further to add other than what's in the papers.

20 THE COURT: So I'm going to deny the request for
21 a stay. And this is essentially for the same reasons
22 that I indicated at the last hearing. I do appreciate
23 Calvary Chapel's exposition in writing of the issues. I
24 don't -- I didn't see that it materially added anything
25 to what we had discussed last time.

26 So then moving onto the housekeeping issues for
27 purposes of preparation for trial, I do have a request
28 for a judicial notice by Calvary Chapel.



1 Any objection, Ms. Johnson or Mr. Avila, to the
2 request for judicial notice?

3 MS. JOHNSON: No, Your Honor.

4 THE COURT: Then the request for judicial notice
5 is granted.

6 And then I believe that leaves us with the
7 in limine issue as far as the propriety of Calvary Chapel
8 calling the enforcement officers. And I have had the
9 opportunity to review the trial briefs and the written
10 motion in limine from the county.

11 Ms. Gondeiro, is there anything that you would
12 like to add in response to the in limine motion that was
13 previewed at our last pretrial conference and that's been
14 now filed in the written in limine?

15 MS. GONDEIRO: No, Your Honor. We no longer
16 actually have any objections to bringing up or further
17 cross-examining the witnesses. We are fine with letting
18 the record stand as it is.

19 THE COURT: So does that mean that you do not
20 intend to present a case or that you simply don't intend
21 to call anybody who testified at the administrative
22 hearing?

23 MS. GONDEIRO: Yes. Yes, Your Honor. That we
24 do not intend to call Mr. Sircar and Ms. Gonzales.

25 THE COURT: Okay. All right. And so then how
26 does that affect the parties' time estimate for the
27 Monday hearing then?

28 MS. JOHNSON: Your Honor, I think that a couple



1 of hours should be sufficient. The county does not
2 expect that the case in chief will be very long. It will
3 be primarily based on evidence that is already in the
4 record -- entirely based on evidence that is already in
5 the record.

6 THE COURT: So the county is going to be
7 submitting on the administrative record that's already
8 been lodged with the Court?

9 MS. JOHNSON: Correct.

10 THE COURT: And will be calling no further
11 witnesses?

12 MS. JOHNSON: That is correct.

13 THE COURT: Okay. And then for Calvary Chapel?

14 MS. GONDEIRO: Your Honor, I think two hours is
15 appropriate. I have no objections to that.

16 THE COURT: Okay. Well, that obviously
17 streamlines fairly significantly our pretrial conference
18 then.

19 Is there anything -- is there anything that I'm
20 overlooking that the parties would like to address as a
21 housekeeping matter for the -- in anticipation of the
22 trial?

23 MR. AVILA: Your Honor, I would just ask very --
24 I'm sorry, Ms. Johnson. I didn't want to cut
25 you off. It looked like you were about to speak.

26 MS. JOHNSON: No. Please, Mr. Avila, go ahead.

27 MR. AVILA: Thank you, Your Honor. Very quickly
28 I would like to ask -- I believe it's embedded in



1 Footnote 1 of Respondent's prehearing brief or pretrial
2 brief is a request for the Court to take judicial notice
3 of the written transcript of the administrative hearing.
4 It's not formally part of the administrative record, but
5 it was included as an attached -- I'm sorry -- as an
6 exhibit filed in the related case. And so I'm --
7 Respondents just ask if the Court will be taking judicial
8 notice of that document as it was filed in the companion
9 matter.

10 THE COURT: So I'm sorry. I think I overlooked
11 that particular request. So the request -- let me just
12 bring up the document.

13 So while I'm trying to bring my computer to
14 life, Mr. Avila, if you could just restate. What you're
15 asking the Court to take judicial notice of is the
16 transcript of?

17 MR. AVILA: Of the October administrative
18 hearing, Your Honor. At that proceeding, the county
19 retained a court reporter to transcribe the proceedings.
20 That transcript has since been submitted as evidence in
21 the related case, which we had two contempt proceedings
22 before Judge Kirwan, and I think it may have also been --
23 I think it was submitted as an exhibit with other
24 pleadings in the related case.

25 And so the request is for the Court to take
26 judicial notice of that document as something that is
27 already on file with this Court.

28 THE COURT: All right. Ms. Gondeiro?



1 MS. GONDEIRO: I have no objections.

2 THE COURT: Okay. Then -- and do I have a copy
3 of that?

4 MR. AVILA: Yes, Your Honor. It was attached as
5 Exhibit 1 to the Respondent's trial brief.

6 THE COURT: Okay.

7 MS. JOHNSON: And the audio transcript that
8 that -- or the audio recording that that transcript
9 reflects is part of the administrative record.

10 THE COURT: And I think that I -- is that part
11 of the digital media that was provided? I haven't had an
12 opportunity to crack that open yet.

13 MR. AVILA: Yes, Your Honor.

14 MS. JOHNSON: Yes.

15 THE COURT: It is. Okay. So that digital media
16 that was sent that's marked as exhibits -- as a number of
17 different exhibits, that's not just the photographic and
18 video evidence; it also includes the audio file from
19 which the transcript was prepared or that corresponds to
20 the transcript?

21 MR. AVILA: Yes, Your Honor.

22 THE COURT: Got it. So I will grant the
23 unopposed request for judicial notice of Exhibit 1 to the
24 trial brief the written transcript of the previous -- the
25 administrative hearing, the outcome of which is at issue
26 for this de novo trial.

27 Other issues that either of the parties would
28 like to bring up or resolve today? Ms. Gondeiro?



1 MS. GONDEIRO: No, Your Honor.

2 THE COURT: All right. Thank you. And then
3 anything further, Ms. Johnson?

4 MS. JOHNSON: There is also an Exhibit 2 to the
5 county's pretrial brief, which it may make sense to
6 address now. That is a declaration from Mike McClure
7 that was submitted, the senior pastor of Calvary Chapel
8 that was also submitted as part of the enforcement
9 proceedings.

10 THE COURT: Ms. Gondeiro, any objection?

11 MS. GONDEIRO: No, Your Honor.

12 THE COURT: Okay. So Exhibit 2 to the trial
13 brief will be admitted. All right. Is there anything
14 further that we need to address?

15 MR. AVILA: Just one question. Your Honor, as a
16 housekeeping matter, I know Ms. Gondeiro has indicated
17 that she won't be calling Enforcement Officer Sircar or
18 Gonzales. I think at our last case management conference
19 Ms. Gondeiro indicated that she may call Pastor Atherley
20 as a witness. And just for housekeeping purposes, I
21 wanted to clarify if that is still contemplated or if we
22 can anticipate proceeding on Monday without any witnesses
23 at all.

24 MS. GONDEIRO: I don't intend to call any
25 witnesses.

26 MR. AVILA: Okay. Thank you.

27 THE COURT: So the purpose of Monday's hearing
28 will be argument only essentially and then whatever



1 additional evidentiary housekeeping matters can be
2 addressed without the necessity of live testimony?

3 MS. JOHNSON: From the county's perspective,
4 that is correct.

5 MS. GONDEIRO: Yes, Your Honor. That is
6 correct.

7 THE COURT: Okay. Thank you very much.
8 Then we can, then, go ahead and recess until
9 Monday, then.

10 I believe that you've been issued Teams
11 invitations for Monday's hearing as well. My question
12 for you is whether you would actually wish to proceed by
13 Teams as opposed to by CourtCall under the circumstances
14 if what we are going to be doing is having argument as
15 opposed to the necessity of counsel interacting with
16 witnesses.

17 MS. JOHNSON: Your Honor, the county is open to
18 either. So if the Court has a preference, we are fine
19 with either option.

20 MS. GONDEIRO: Yeah, we have no preference
21 either.

22 THE COURT: Okay. So having really at the 11th
23 hour -- and I appreciate everybody's patience while we
24 were trying to get that organized through our -- our
25 systems here. Having already done that and not hearing
26 any complaint about the functionality for today's
27 purposes, we can just leave it as set.

28 My only request is that if we are going to be



1 using Teams for this purpose, that I just -- that the
2 parties employ their video --

3 MS. JOHNSON: Absolutely.

4 THE COURT: -- for that purpose. And no need to
5 do it now, obviously. But on Monday, especially if we
6 are talking about two hours of arguments, it would
7 certainly assist the Court in being able to track.

8 MR. AVILA: Certainly, Your Honor.

9 THE COURT: All right, then. Thank you very
10 much, everyone. And I will see you on Monday.

11 MS. JOHNSON: Thank you, Your Honor.

12 MR. AVILA: Thank you, Your Honor.

13 MS. GONDEIRO: Thank you, Your Honor.

14 THE COURT: Thanks, everyone.

15 (Whereupon at 3:50 p.m., the proceeding was
16 concluded.)
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1 CERTIFICATE

2
3
4 I, Martha Ruble, hereby certify that I am a
5 Certified Shorthand Reporter, License Number C-5145, that
6 to the best of my ability, I reported the foregoing
7 Statement on the Record; that the foregoing Statement on
8 the Record was prepared into its typewritten form under
9 my direction and supervision.

10
11 IN WITNESS WHEREOF, I have hereunto set my
12 hand.

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16 Date: March 11, 2021

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21 Martha Ruble, CSR-5145
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CALVARY CHAPEL SAN JOSE vs THE COUNTY OF SANTA CLARA

March 04, 2021

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